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COMMENTS

PARENTAL NOTIFICATION: A STATE-CREATED OBSTACLE TO A MINOR WOMAN'S RIGHT OF PRIVACY

The level of sexual activity of minors has risen and continues to rise. The number of teenage pregnancies has also risen and it is estimated that if this trend continues, four out of every ten minor women will become pregnant at least once.¹ Abortion has become a major means by which minor women are preventing unwanted pregnancies, but access to abortions for minor women has become increasingly controversial. The issue of whether or not parents should be informed of their daughter's abortion decision has recently received attention from both the courts and legislatures.

A woman's freedom to decide whether or not to terminate her pregnancy has been protected as a fundamental right of privacy.² This important right has also been extended to minor women.³ Traditionally, minors have been more restricted than

1. It is estimated that the proportion of all minor women who have ever been premaritally pregnant rose from 9% in 1971 to 13% in 1976 to 16% in 1979. Some 12,000,000 teenagers are sexually active resulting in approximately 1,000,000 teenage pregnancies per year. Meyers, *Are Minors Entitled to Medical Privacy?* 10 STUDENT LAWYER 19 (1981); Zelnick & Kanter, *Sexual Activity, Contraceptive Use and Pregnancy Among Metropolitan-Area Teenagers: 1971-1979*, 12 FAM. PLAN. PERSP. 230 (1980).

2. *Roe v. Wade*, 410 U.S. 113 (1973). The Court in *Roe* held that the right of privacy included a woman's decision whether to terminate her pregnancy. For further discussion of *Roe*, see *infra* note 43.

3. *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). The Court decided that a state did not have the constitutional authority to give a third party an absolute veto over a minor woman's decision to terminate her pregnancy. For further discussion of *Danforth*, see *infra* notes 44-48 and accompanying text.

adults in their rights and activities.⁴ Restrictions have been grounded in the belief that minors lack the maturity and capacity necessary to understand the consequences of their actions and to make decisions.⁵ The constitutional rights of minors have, therefore, been limited because of this traditional viewpoint.⁶

The Supreme Court has never equated minors' constitutional rights with those of adults. It has extended due process rights to minors, but has not interpreted the due process clause to provide constitutional protections equal to those of

4. It was believed necessary to limit the freedom of minors because they were "in a state to require being taken care of by others, [and] must be protected against their own actions as well as against external injury." J. MILL, ON LIBERTY 11 (D. Spitz ed. 1975). This attitude towards minors is reflected in the numerous ways in which their activities and rights are restricted. California statutory restrictions are typical of those found in other jurisdictions. Minors may not contract freely. See CAL. CIV. CODE §§ 34, 35 (West Supp. 1980). Minors are restricted in work by child labor laws. See CAL. LAB. CODE §§ 1290, 1292-1294 (West 1971). They may not marry without parental consent. See CAL. CIV. CODE §§ 4101, 4201 (West Supp. 1980). They may not vote. See CAL. ELEC. CODE § 17 (West 1977).

5. See *Bellotti v. Baird*, 443 U.S. 622 (1970), in which the Court recognizes that the freedom of minors may be limited:

[T]he Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.

Id. at 635 (footnote omitted); see also *Ginsberg v. New York*, 390 U.S. 629 (1968), in which the Court distinguishes between the rights of adults and those of children or minors:

[A]t least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice It is only upon such a premise, I should suppose, that a State may deprive children of other rights—the right to marry, for example, or the right to vote—deprivations that would be constitutionally intolerable for adults.

Id. at 649-50 (footnotes omitted). See also Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights,"* 1976 B.Y.U. L. REV. 605 (asserting that too much freedom for minors would undermine the preparatory role of the family which is a prerequisite to the existence of a rational and productive individual).

6. *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (upholding right of Amish parents to refuse to send their children to high school); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (parents have right to choose their children's education).

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adults.⁷ Minor women do have the constitutional right to decide whether to bear a child,⁸ but the states have greater latitude in regulating that right with respect to minors than they do with adults.⁹ The Court has also traditionally upheld the parents' right to direct freely their children's upbringing and education.¹⁰

The constitutionality of parental notification statutes is yet to be decided. The issue was addressed by the Court in *H.L. v. Matheson*.¹¹ However, the Court failed to decide conclusively the constitutionality of parental notification requirements because the holding was very narrow and only applied to minor women who are not mature enough to make an abortion decision.¹² This issue needs to be resolved as a number of states have attempted to limit a minor woman's access to abortion.¹³

7. *Goss v. Lopez*, 419 U.S. 565 (1975) (requiring due process protections before suspension from school); *In re Gault*, 387 U.S. 1 (1967) (providing certain rights in juvenile court hearings).

8. *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).

9. The Court in *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976) and *Bellotti v. Baird*, 443 U.S. 622 (1979), indicated that a state may constitutionally require some parental involvement in a minor woman's abortion decision.

10. See cases cited *supra* note 6.

11. 450 U.S. 398 (1981).

12. *Id.* at 411. The Court held that immature minors often lack the ability to make informed choices that take into account immediate and long-range consequences; therefore, a state may determine that parental consultation is desirable.

13. *E.g.*, ILL. ANN. STAT. ch. 38, § 81-54 (Smith-Hurd Supp. 1981-1982) which provides in part:

No abortion shall be performed in this state if the woman is under 18 years of age and has not married except:

. . . .

(3) After the consent of her parents is secured and certified in writing.

If one of the parents has died, has deserted his or her family, or is not available, consent by the remaining parent is sufficient. If both parents have died, have deserted their family or are not available, consent of the minor's guardian or other person standing in loco parentis is sufficient.

If such consent is refused or cannot be obtained, consent may be obtained by order of a judge of the circuit court upon a finding, after such hearing as the judge deems necessary, that the pregnant minor fully understands the consequences of an abortion to her and her unborn child. . . . Notice of such hearing shall be sent to the parents of the minor at their last known address

The Illinois statute does not permit a minor woman to enter the courts directly to obtain permission for an abortion. It is similar to the statute struck down in *Bellotti* which held that "every minor must have the opportunity—if she so desires—to go directly to a court without first consulting or notifying her parents." *Bellotti v. Baird*,

Additionally, there have been congressional attempts to qualify a minor woman's access to abortion.¹⁴ Because the issue of parental notification remains unresolved, minor women cannot be assured of the right to choose an abortion even when abortion may be their only choice. Dramatic increases in teenage pregnancies evidence the need for greater access to and information about abortion. This Comment argues that parental notification statutes unduly burden a minor woman's right of privacy as they impose a state-created obstacle to minor women who wish to exercise their right to have an abortion. This right means very little if state regulations or restrictions make access to abortions difficult or impossible. The interests that such regulations seek to protect — the health of the minor and the parent-child relations — are not served by parental notification. The health consequences for minor women who bear children are severe and the psychological health of minor women can be detrimentally affected by requiring parental notice.¹⁵

This Comment concludes that the only interests served by parental notification statutes are those of groups opposed to abortion. Since 1973, when the Court held in *Roe v. Wade*¹⁶ that a woman has a fundamental right to decide whether or not to bear a child, groups opposed to abortion have sought to overturn

443 U.S. 622, 647 (1970). The Illinois parental consent requirement was held unconstitutional (as violative of equal protection for under inclusiveness in excluding married minors and over inclusive in including married, emancipated minors) in *Wynn v. Carey*, 582 F.2d 1375 (7th Cir. 1978). For other state statutes which require either consent or notification see: LA. REV. STAT. ANN. §§ 40:1299.35.5 (found unconstitutional under *Bellotti v. Baird* in *Margaret S. v. Edwards*, 488 F. Supp. 181 (E.D. La. 1980)) (amended 1980) (West Supp. 1982); 1981 Minn. Sess. Law Serv. ch. 228 (amending MINN. STAT. § 144.343) (West Supp. 1982); MO. ANN. STAT. § 188.028 (Vernon Supp. 1982) (held unconstitutional in *Planned Parenthood v. Ashcroft*, 483 F. Supp. 679 (W.D. Mo. 1980)); NEB. REV. STAT. § 28-347 (Supp. 1981); NEV. REV. STAT. § 442.255 (1981); N.D. CENT. CODE § 14-02.103 (1980) (held unconstitutional in *Leigh v. Olsen*, 497 F. Supp. 1340 (D.N.D. 1980)) (amended 1981) (Interim Supp. 1981).

14. S. 158, S. 1741, 97th Cong., 1st Sess., 127 CONG. REC. 11,528-29 (daily ed. Oct. 15, 1981) (the Human Life Statute) (declares that human life begins at conception and would extend the same legal protections to the unborn that apply to all persons); S.J. Res. 110, 97th Cong., 1st Sess. (1981) (Human Life Federalism Amendment) (would authorize Congress and the states to regulate or prohibit abortion). See also S. 1808, 96th Cong., 1st Sess. (1979) (Family Protection Act) (would have required parental notification for those contraception and abortion programs seeking federal funding).

15. Women under the age of 20 have a higher rate of maternal complications. ALAN GUTTMACHER INSTITUTE, *TEENAGE PREGNANCY: THE PROBLEM THAT HASN'T GONE AWAY* (1981) [hereinafter cited as *TEENAGE PREGNANCY*].

16. 410 U.S. 113 (1973). For further discussion of *Roe* see *infra* note 43.

this decision.¹⁷ These efforts, until recently, have been unsuccessful as the Court has struck down regulations which place an undue burden on a woman's right to privacy.¹⁸ In 1980, however, the Court upheld the constitutionality of the Hyde Amendment which drastically limits funding for abortion.¹⁹ There are many complex reasons for opposition to abortion, but opposition has focused on overturning *Roe*, or limiting access to abortion.²⁰ Requiring parental notice will in effect limit access to an abortion for minor women and serve the interests of those opposed to abortion.

17. Donovan, *Half a Loaf: A New Antiabortion Strategy*, 13 FAM. PLAN. PERSP. 262 (1981). The author discusses the current antiabortion legislation which attempts to override the Court's decision in *Roe*:

Since 1973, when the Supreme Court held that the constitutional right to privacy included a woman's decision to have an abortion, there have been three basic types of constitutional amendments introduced in Congress: the human life amendment, which would bar abortions except to save the pregnant woman's life; the "paramount" human life amendment, which would impose an absolute ban on abortion with no exceptions; and a states' rights amendment, which would allow states to establish their own abortion policies, as they did before 1973.

18. See *Colautti v. Franklin*, 439 U.S. 379 (1979) (determination of viability is for the judgment of an attending physician; state cannot determine viability without allowing for judgment of physician); *Mahoning Women's Center v. Hunter*, 610 F.2d 456 (6th Cir. 1979), *vacated*, 447 U.S. 918 (1979) (ordinances which impose a series of costly medical and building code regulations on abortion facilities are unconstitutional); *Freiman v. Ashcroft*, 584 F.2d 247 (8th Cir. 1978), *aff'd*, 440 U.S. 941 (1978) (statute requiring a woman to be informed that an infant born alive during an attempted abortion is a ward of state is unconstitutional); *Hodgson v. Lawson*, 542 F.2d 1350 (8th Cir. 1976) (state cannot enact legislation which has the effect of establishing a presumption of viability of the fetus prior to 24 weeks); *Wynn v. Scott*, 449 F. Supp. 1302 (N.D. Ill. 1978) (state cannot require that a woman be informed of fetal development prior to abortion); *Planned Parenthood v. Fitzpatrick*, 401 F. Supp. 554 (E.D. Pa. 1975), *aff'd sub nom.*, *Franklin v. Fitzpatrick*, 428 U.S. 901 (1976) (state cannot require written consent of spouse).

19. *Harris v. McRae*, 448 U.S. 291 (1980). The Hyde Amendment refers to funding restrictions adopted by Congress barring the use of federal funds for reimbursement of abortion costs under the Medicaid program. For further discussion of the funding issue, see generally Note, Committee to Defend Reproductive Rights v. Myers: *Procreative Choice Guaranteed for All Women*, *infra* page 691.

20. The right-to-life movement is at a critical point in its crusade to prohibit abortion. With an administration publicly committed to outlawing abortion, antiabortion senators as chairmen of key committees, and many abortion opponents newly elected to the House and Senate, the year [1981] began with the widespread expectation that Congress would take some action to override the Supreme Court's 1973 decisions legalizing abortion.

Donovan, *supra* note 17, at 262.

I. BACKGROUND: THE PROBLEM OF TEENAGE PREGNANCY

Parental notification must be considered in the context of increasing teenage sexual activity and pregnancies.²¹ While the level of sexual activity and pregnancy has risen, efforts by minor women to avoid pregnancy and childbirth have intensified.²² Minor women have increased their efforts to avoid pregnancy by increasing the use of contraceptives.²³ Because they are not using the most effective methods of birth control, the pregnancy rate has continued to climb.²⁴ Abortion has, therefore, become a major means by which minor women prevent unwanted births.²⁵

Abortions are sought by minor women because of the weighty and often adverse consequences of having a child. These range from interruption of the woman's education to early and unstable marriages.²⁶ Economic effects of childbirth can be par-

21. See *supra* note 1 and accompanying text.

22. Zelnick & Kanter, *supra* note 1, at 237. The authors found that minors were trying harder than ever to avoid pregnancy and childbirth.

23. *Id.* The percentage of premaritally sexually active women aged 15-19 who ever experienced a premarital pregnancy and never used contraceptives declined from 58.8% in 1976 to 50.3% in 1979. *Id.*

24. *Id.* Use of birth control pills declined 16% between 1976 and 1979. Use by first-time contraceptive users declined from 32.8% to 19.4%, whereas use of diaphragms, rhythm and withdrawal methods increased. The authors speculate that the declining use of the pill, especially with first-time contraceptive users, increased the prevalence of first pregnancies.

25. In 1973, 246,000 abortions were obtained by women 19 or younger. By 1978, the number almost doubled to 434,000. Women aged 15-19 terminated two-fifths of their pregnancies by abortion. The availability of abortion has led to better contraceptive use rather than a relaxation of contraceptive use. There is evidence that teenagers practice contraception much more effectively after they have had abortions. *TEENAGE PREGNANCY*, *supra* note 15, at 52-53. Because of early age of initiation of intercourse and the associated nonuse of contraceptives, half of all premarital teenage pregnancies occur in the first six months after the minors become sexually active; one-fifth occur in the first month. Zabin, Kanter, & Aelnick, *The Risk of Adolescent Pregnancy in the First Months of Intercourse*, 11 *FAM. PLAN. PERSP.* 215 (1979).

26. See Balwin & Cain, *The Children of Teenage Parents*, 12 *FAM. PLAN. PERSP.* 34 (1980). The authors found that children born to teenagers suffer intellectually, largely because of the economic and social impact of early childbearing on the young parents. Such children are more likely to spend part of their childhood in one-parent households and have children themselves while adolescents. Card & Wise, *Teenage Mothers and Teenage Fathers: The Impact of Early Childbearing on the Parents' Personal and Professional Lives*, 10 *FAM. PLAN. PERSP.* 199 (1978). The younger the parent at the birth of a child, the greater their educational setback. Young parents are more likely to hold low-prestige jobs because they do not complete as many years of school. Furstenburg, *The Social Consequences of Teenage Parenthood*, 8 *FAM. PLAN. PERSP.* 148 (1976).

ticularly severe when a minor woman drops out of high school and attempts to support herself and a child.²⁷ Health consequences for minor women who bear children can also be harsh. Maternal mortality and non-fatal maternal complications such as toxemia, anemia and complications from premature births are higher with women under twenty than with adult women.²⁸ Access to an abortion is therefore a vital option for pregnant minor women faced with such consequences. Access to an abortion free from parental interference can be just as vital. For some minor women, parental notification will prevent them from obtaining an abortion.²⁹

Many minor women, especially the very young, do consult their parents about their decision to have an abortion.³⁰ Younger women are far more likely to tell their parents of their decision,

Three out of five premaritally pregnant mothers aged 17 and younger were separated or divorced within six years after they married. One-fifth of the marriages were dissolved within 12 months. Minor women 17 or younger are three times more likely, and their husbands twice as likely, to split up with their spouses than those who marry in their 20's. ALAN GUTTMACHER INSTITUTE, 11 MILLION TEENAGERS: WHAT CAN BE DONE ABOUT THE EPIDEMIC OF ADOLESCENT PREGNANCIES IN THE UNITED STATES?, 28 (1976) [hereinafter cited as 11 MILLION TEENAGERS].

27. See Moore, *Teenage Childbirth and Welfare Dependency*, 10 FAM. PLAN. PERSP. 233 (1978). The author of this two-year study of teenage mothers concludes that a woman who bears a child during her teens is much more likely to be forced to support herself and her children on a low income or to become dependent on welfare assistance than the woman who postpones childbearing. There are approximately 600,000 families with children five years old or younger headed by mothers aged 14-25. Two-thirds of these families are living below the poverty level. TEENAGE PREGNANCY, *supra* note 15, at 33.

28. The maternal death rate for 1977-78 among women under age 15 was 18 per 100,000 live births. Non-fatal complications were higher for teenage mothers. They are 15% more likely to have anemia and 23% more likely to suffer from complications of premature birth than are mothers who gave birth at ages 20-24. TEENAGE PREGNANCY, *supra* note 15, at 29.

29. See *infra* notes 34 and 35 and accompanying text.

30. Torres, Forrest & Eisman, *Telling Parents: Clinic Policies and Adolescents' Use of Family Planning and Abortion Services*, 12 FAM. PLAN. PERSP. 284 (1980). The authors surveyed 2,540 family planning agencies that administered 5,000 clinics and 2,100 hospitals which provide abortion services, inquiring about policies and practices concerning parental notification and consent. They also surveyed 2,400 patients under the age of 18 who obtained contraceptives and abortions at these facilities to determine whose parents knew they were being provided these services. The study showed that 55% of those surveyed said their parents knew they were obtaining an abortion. Thirty-eight percent told their parents voluntarily, 13% said their parents suggested an abortion, 2% said their parents found out from a relative or friend and 2% reported that the clinic required them to tell their parents or informed their parents directly. Fifty-four percent of the abortion patients said they had discussed their decision with their parents. *Id.* at 288.

and their parents are more likely to refer them for an abortion.³¹ However, many minor women do not consult their parents and do not wish to have their parents notified of their abortion decision.³² For some, it is a matter of personal autonomy and a desire for minimal parental intervention.³³ For many, parental intervention could result in an undesired marriage, expulsion from home, or continuance of the pregnancy as a punishment for sexual activity.³⁴ Other minor women could be exposed to physical or emotional abuse, withdrawal of financial support or, at the very least, parental pressure causing great emotional distress.³⁵ Such consequences do not occur in all cases, especially because many minor women *do* consult their parents and receive support in making their decision.³⁶ Parental interference and displeasure tends to be more frequent and pronounced where parents cannot accept their daughter's sexual maturity and activity or where parents have very strong feelings regarding abortion.³⁷

A minor woman's interest in obtaining an abortion free of parental notice is great, especially when notification would pre-

31. Seventy-two percent of those minor women 15 or younger discussed their decision to obtain an abortion with their parents. *Id.*

32. Forty-six percent of those surveyed said that their parents did not know of their decision. *Id.*

33. Note, *Parental Notification as a Prerequisite for Minors' Access to Contraceptives: A Behavioral and Legal Analysis*, 13 U. MICH. J.L. REF. 196, 203 (1979).

34. The Court recognized in *Planned Parenthood v. Danforth* that conflict can exist in a family when a minor woman is pregnant. 428 U.S. 52, 75 (1976). It also noted in *Bellotti II* that "many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access to court." *Bellotti v. Baird*, 443 U.S. 622, 647 (1970).

Many adults are also disturbed by the idea of adolescent sexuality, and "they advocate 'punishing' adolescents for their sexual activity in the hope that having borne an out-of-wedlock child, faced educational disruption, and/or having undergone a painful premature pregnancy, the teenager will be persuaded to stop having sexual relations." 11 MILLION TEENAGERS, *supra* note 26, at 56. Continuance of pregnancy as punishment and forced marriage were also seen as possibilities of parental interference by lower courts. See *Wynn v. Carey*, 582 F.2d 1375, 1388 n.24 (7th Cir. 1978); *Women's Community Health Center v. Cohen*, 477 F. Supp. 542, 550 (D. Me. 1979).

35. In *Women's Community Health Center v. Cohen*, the district court also noted as possible results of parental notification, parental pressure which in some cases would result in great emotional distress, physical and psychological risks to the minor woman, and delay on the part of the woman in seeking assistance with her pregnancy which would increase the hazards of an abortion if she chose to obtain one. 477 F. Supp. 542, 550 (D. Me. 1979). See also *supra* note 34.

36. See *supra* note 30 and accompanying text.

37. See *supra* notes 34 and 35.

vent an abortion. The effects of requiring parental notification can be dramatic. One study on the probable impact of parental notification estimates that 19,000 minor women would resort to self-induced or illegal abortions and that 18,000 more minor women would bear unwanted children, were parental notification required.³⁸ In addition, another 5,000 minors would run away from home either to have the unwanted child or to obtain an illegal abortion.³⁹ If the minor woman gives birth as a result of parental pressure, there are increased health risks to the child. For example, the infant death rate is higher for children born to women under twenty⁴⁰ and minor women are far more likely to have premature, or low-birth-weight babies.⁴¹

The impact on the health of the mother and child, the social and economic consequences, and the emotional and physical abuse affect not only minor women. The increase in illegal abortions, unwanted children, and physically abused minors is felt by society as a whole.⁴²

II. ESTABLISHMENT OF A MINOR WOMAN'S RIGHT OF PRIVACY

A woman's freedom to decide whether or not to conceive or bear a child is a fundamental right which has recently been rec-

38. Zelnick & Kanter, *supra* note 1 at 291. In 1978, 184,000 teenagers aged 17 and younger obtained abortions. The authors applied the results of their survey to this statistic and found that, if parental notification were required of all abortion providers, an additional 39,000 minor women might inform their parents. But a higher number, 42,000, would not obtain a legal abortion. Based on their findings, the authors conclude that 19,000 minor women could be expected to attempt to obtain an illegal abortion, another 18,000 would have an unwanted birth and another 5,000 would run away from home, either to have the unwanted birth or to obtain an abortion.

39. *Id.*

40. Babies born to minor women are far more likely to die in the first year of life than those born to mothers over the age of twenty. The risk of death is approximately 2 times higher than that of babies born to mothers over 20, and greater than that of infants born to mothers aged 40 or older—a high-risk age-group. The number of infant deaths per 1,000 live births is 20.7 for women under 20, 13.2 for women 20-24, 10.7 for women 25-29 and 14.8 for women over 40. *TEENAGE PREGNANCY*, *supra* note 15, at 29.

41. *Id.* This risk is 39% higher for babies born to minor women than for babies born to women over 20.

42. The projected cost to society has not been statistically assessed as yet, but minor women will become economically dependent upon state and federal services as the number of unwanted births increase and as more minor women do not finish high school. These results cannot fail to have an effect on society as a whole.

ognized by the Court.⁴³ In *Planned Parenthood v. Danforth*,⁴⁴ the right to decide whether or not to bear a child was extended to minor women. A state statutory provision requiring written parental consent before a physician could perform an abortion on a minor woman was invalidated by the Court. The Court reasoned that:

[T]he state does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy

Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.⁴⁵

The Court also recognized that a state has broader authority to regulate the activities of minor women than it has in regulating those of adult women.⁴⁶ However, the Court stated that before

43. The right of privacy was recognized in *Griswold v. Connecticut*, 381 U.S. 479 (1965). In reviewing a state statute prohibiting access to contraceptives, the Court emphasized the privacy of the marital relationship to support its finding the statute unconstitutional. *Id.* at 485-86. The right of privacy, according to Justice Douglas, originated from those protections afforded by the third, fourth, fifth and ninth amendments. *Id.* at 484.

In *Eisenstadt v. Baird*, 405 U.S. 438 (1972), the Court employed the equal protection clause of the fourteenth amendment to extend to single women the same right of access to contraceptives. Justice Brennan stated that "[i]f the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Id.* at 453 (emphasis in original).

Roe v. Wade, 410 U.S. 113 (1973), established the right of privacy as a fundamental right. Such a right is a protected personal liberty under the fourteenth amendment and includes decisions concerning family relationships, procreation, contraception, child rearing and education. *Id.* at 152-53. The *Roe* court struck down a statute which outlawed abortions except those necessary to save the mother's life. The Court stated the right of privacy included a woman's decision on whether to terminate her pregnancy. *Id.* at 153. Because this was a fundamental right, any state regulations must be justified by a compelling state interest. *Id.* at 153-55. The state interests identified by the Court were protection of a woman's health and protection of the potential life of the fetus. *Id.* at 154. These interests, balanced against the woman's right of privacy, were found to be less than compelling. *Id.* at 163-64.

44. 428 U.S. 52 (1976). This case involved a Missouri statute which called for a woman's informed consent, certain recordkeeping requirements, and parental consent for minor women.

45. *Id.* at 74.

46. *Id.* The Court did not discuss how this broader authority of the state could be

the right of minor women to have abortions can be regulated there must be a significant state interest.⁴⁷ Safeguarding the family unit and reinforcing parental authority were not, according to the Court, interests served by providing a parent with an absolute veto. In addition, parental authority would not be enhanced by requiring parental consent.⁴⁸

In a companion case to *Danforth*, *Bellotti v. Baird (Bellotti I)*,⁴⁹ the Court considered a Massachusetts statute requiring either parental consent or a court order before a physician could perform an abortion on a minor woman. The Court indicated that it might accept as constitutional some parental involvement.⁵⁰ However, the case was remanded to the Massachusetts Supreme Court for further interpretation of the statute.⁵¹ In *Bellotti v. Baird (Bellotti II)*,⁵² the lower court's decision that the statute was unconstitutional was upheld in a plurality opinion by Justice Powell. The Court noted: "[T]he tradition of parental authority is not inconsistent with our tradition of individual liberty. . . . Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding."⁵³ The Court, however, distinguished the decision of a minor woman to seek an abortion from other decisions made during minority.⁵⁴ Although parental deference might be permitted when other

exercised constitutionally.

47. *Id.* at 75. The Court did not state explicitly what a significant state interest involves, or whether the test for state interference was as strict as the test used when a compelling state interest is involved.

48. *Id.* This statement reflects the court's awareness of the conflicts which may occur when a minor woman and her parents so disagree that the woman does not wish to inform her parents of the decision to terminate her pregnancy.

49. 428 U.S. 132 (1976).

50. *See id.* at 147.

51. *Id.* at 146-52. The Court found the statute could have various constructions, even though it was argued by the state that the parental consent requirement did not create the kind of absolute veto held to be unconstitutional in *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). The Massachusetts Supreme Judicial Court was instructed to rule on the meaning of the statute, and the District Court was to decide the constitutionality of the statute once the Judicial Court had ruled.

52. 443 U.S. 622 (1979). After the Massachusetts Supreme Judicial Court interpreted the statute, the District Court again declared it unconstitutional.

53. *Id.* at 638-39.

54. *Id.* at 642. The decision to seek an abortion differs for example from the decision to marry before reaching majority. A minor can postpone her decision to marry, but she cannot postpone her decision to have an abortion.

choices face a minor woman, the "unique nature and consequences of the abortion decision" made it inappropriate to give parents an absolute veto over the minor's abortion decision.⁵⁵

The Court held that where a state requires parental consent for a minor woman to obtain an abortion, an alternative procedure by which an abortion can be authorized must also be provided.⁵⁶ The challenged statute was found to fall short of this constitutional standard because it did not allow every minor woman access to an alternative proceeding. In addition, the statute permitted the withholding of judicial authorization from a minor who was found to be mature and fully competent to make an abortion decision.⁵⁷

Thus, the Court in *Danforth* and *Bellotti II* established that a minor woman has a fundamental right of privacy, but also indicated that a state has greater latitude in regulating this right than it has with adults.⁵⁸ These two cases did not specify whether state interference with the right of minor women is subject to the same scrutiny by the Court as is true in cases involving adults. It has been asserted that "a significant state interest" is a less stringent standard than the compelling state interest required in *Roe*.⁵⁹ It is apparent from *Bellotti I* and *Bellotti II* that the Court will permit some parental involvement provided it does not constitute an absolute veto. How far a state can go in regulating a minor woman's right to privacy is not clear.

55. *Id.* at 643 (quoting *Planned Parenthood v. Danforth*, 428 U.S. at 74).

56. 443 U.S. at 643. The purpose of such a proceeding would be for the minor woman to show that she was mature and sufficiently well-informed to make a decision regarding an abortion independent of parental wishes and that, even if she was found to be immature, the abortion would be in her best interests.

The mature minor concept is applicable in many medical situations and "supports the competence of a minor to consent to [her] own health care when sufficiently mature to understand the benefits and risks of the proposed treatment." BUREAU OF COMMUNITY HEALTH SERV., PUBLIC HEALTH SERV., HEALTH SERV. ADMIN., U.S. DEP'T OF HEW, ADOLESCENT HEALTH CARE: A GUIDE FOR BCHS-SUPPORTED PROGRAMS AND PROJECTS 61-62 [1979]. [hereinafter cited as ADOLESCENT HEALTH CARE].

57. 443 U.S. at 646-51.

58. In *Danforth*, the Court recognized the state's authority to regulate some activities of minors. 428 U.S. at 74. In *Bellotti II*, the state's authority was reaffirmed. 443 U.S. at 642.

59. Note, *Parental Notice Statutes: Permissible Regulation of a Minor's Abortion Decision*, 49 FORDHAM L. REV. 81 (1980) (arguing that parental notification statutes do not burden a minor woman's right of privacy and that significant state interests are protected by such statutes).

III. *H.L. v. MATHESON*

The issue of the constitutionality of parental notice statutes remains unresolved. A number of statutes requiring a physician to notify a minor woman's parents before performing an abortion have either been struck down or enjoined by lower federal courts.⁶⁰ Although these statutes were found unconstitutional, similar statutes remain in some states,⁶¹ while other legislatures

60. Recently, three federal courts have found such statutes unconstitutional. *Leigh v. Olson*, 497 F. Supp. 1340 (D.N.D. 1980); *Margaret S. v. Edwards*, 488 F. Supp. 181 (E.D. La. 1980); *Women's Community Health Center v. Cohen*, 477 F. Supp. 542 (D. Me. 1979). A Louisiana statute, LA. REV. STAT. ANN. § 40:1299.35.5 provided in part:

No physician shall perform or induce an abortion upon an unmarried pregnant woman under the age of eighteen without first having given at least twenty-four hours actual notice to one of the parents or the legal guardian of the minor pregnant woman as to the intention to perform such abortion.

(Amended 1980) (West Supp. 1982). The district court found the statute imposed an "undue burden upon the right to obtain an abortion of unmarried women between the ages of fifteen and seventeen." *Margaret S. v. Edwards*, 488 F. Supp. 181 (E.D. La. 1980). The Louisiana statute had a separate provision for women under 15: They could either obtain a court order for an abortion without notifying a parent, or obtain parental consent. "Apparently, the State determined that a minor woman between the ages of fifteen and seventeen is mature enough to make the decision whether to obtain an abortion without the necessity of either parental consent or a court order." *Id.* at 204. The court found the Louisiana legislature had not considered a minor woman's constitutional right of privacy and that the statute might have "a chilling effect on the minor's right to independently make certain kinds of important decisions which are the basis of a woman's constitutional right to obtain an abortion." *Id.*

In *Women's Community Health Center v. Cohen*, 477 F. Supp. 542 (D. Me. 1979), the district court preliminarily enjoined a Maine Statute, ME. REV. STAT. ANN. tit. 22, § 1597 (1980) which provides in part: "A person shall not perform an abortion on an unemancipated minor without first giving notice to one of her parents or guardians of his intention to perform that abortion or notifying the Department of Human Services of his inability to give notice." As in the decision reached by the Louisiana district court, the Maine court relied on *Bellotti II*, in finding that the statute had a substantial probability of being found unconstitutional. The court was convinced by affidavits "showing that in some instances the involvement of parents in a minor's abortion decision will be harmful to both the minor and the family relationship." 477 F. Supp. at 547.

A North Dakota statute, N.D. CENT. CODE § 14-02.1-03(1) (1981) (amended 1981) (Interim Supp. 1981) outlawing abortions for unemancipated minors without 24 hour actual notice was found unconstitutional in *Leigh v. Olson*, 497 F. Supp. 1340 (D.N.D. 1980). This court, also relying on *Bellotti II*, held the statute's requirement of a parental notification in every case constituted an undue burden on the exercise of a minor woman's right to obtain an abortion. 497 F. Supp. at 1349-50.

61. E.g., MD. ANN. CODE art. 43, § 135(d) (1980) provides in part:

[N]o abortion shall be performed upon an unmarried minor female without prior notification of parent or guardian, unless the minor is living apart from her parent or guardian and a reasonable effort to notify them has been unsuccessful. A receipt that a registered or certified letter was mailed attached

have refused to pass parental notification statutes.⁶² Additionally, a bill now before Congress would require parental notification before hospitals and clinics would be eligible for federal funds.⁶³ Resolution of the situation was expected when the Supreme Court agreed to hear a challenge to a Utah parental notification statute. This statute, upheld by the Utah Supreme Court, was challenged as an unconstitutional burden on a minor woman's right to an abortion.⁶⁴

However, the United States Supreme Court's decision in *H.L. v. Matheson*⁶⁵ only resolved the narrow issue of parental notification as it affects unemancipated minor women who make no claim as to maturity to give informed consent. The statute had been challenged as overbroad because it could apply to all unmarried minor women.⁶⁶ Chief Justice Burger, writing the plurality opinion, stated that because the appellant lacked standing, it was not necessary to decide the question of the stat-

to a copy of the notice letter sent such parent . . . at his or her last known address shall be conclusive evidence of notice or attempted notice required by this subsection.

See also MONT. CODE ANN. § 94-5-616 (Spec. Supp. 1977) ("No abortion may be performed upon any woman in the absence of . . . the written notice to a parent, if living, or the custodian or legal guardian of such woman, if she is under eighteen (18) years of age and unmarried."); UTAH CODE ANN. § 76-7-304 (1978) ("To enable the physician to exercise his best medical judgment, he shall . . . notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor.").

62. See *infra* notes 82 and 83.

63. S. 1808, 96th Cong., 1st Sess. (1979) (The Family Protection Act). The stated purpose of the Act is to "strengthen the American family and promote the virtues of family life through education, tax assistance, and related measures." The Act provides in part:

No program, project, or entity shall receive Federal funds, either directly or indirectly, under any provisions of law unless such program, project, or entity, prior to providing any contraceptive device or abortion service (including abortion counseling) to an unmarried minor, notifies the parents or guardians of such minor that such contraceptives are being provided.

The Reagan administration has also drafted proposals requiring family planning clinics that receive federal funds to notify parents within ten days of a minor woman receiving prescription birth control devices. S.F. Chronicle, Feb. 20, 1982, at 7, col. 1.

64. *H.L. v. Matheson*, 604 P.2d 907 (Utah S. Ct. 1979). The Utah Supreme Court concluded that encouraging a minor to seek the advice of her parents promoted a significant state interest in supporting the important role of parents in child-rearing. *Id.* at 912.

65. 450 U.S. 398 (1981).

66. *Id.* at 405. The appellant had contended that the Utah statute could be construed as applying to mature and emancipated minor women.

ute's constitutionality as applied to mature or emancipated minor women.⁶⁷ The only issue before the Court, according to Justice Burger, was the constitutionality of the statute requiring parental notification, "when the girl is living with and dependent upon her parents, . . . when she is not emancipated by marriage or otherwise, and . . . when she has made no claim or showing as to her maturity or as to her relations with her parents."⁶⁸ With the issue narrowed to only unemancipated and immature minors, the Chief Justice concluded the statute served the significant state interests of protecting family integrity and protecting minors:⁶⁹

That the requirement of notice to parents may inhibit some minors from seeking abortions is not a valid basis to void the statute as applied to appellant and the class properly before us. The Constitution does not compel a State to fine-tune its statutes so as to encourage or facilitate abortions.⁷⁰

Justices Powell and Stewart joined the plurality opinion "on the understanding that it leaves open the question whether [the statute] unconstitutionally burdens the right of a mature minor or a minor whose best interests would not be served by parental notification."⁷¹ Justice Powell concluded that a state may not validly require notice to parents in all cases,

without providing an independent decision-maker to whom a pregnant minor can have recourse if she believes that she is mature enough to make the abortion decision independently or that notification otherwise would not be in her best interest. . . . The circumstances relevant to the abor-

67. "[T]he trial court found that appellant 'is unmarried, fifteen years of age, resides at home and is a dependent of her parents.' That affords an insufficient basis for a finding that she is either mature or emancipated." *Id.* at 406.

68. *Id.* at 407.

69. *Id.* at 411. The Court stated the statute "plainly serves the important consideration of family integrity and protecting adolescents which we identified in *Bellotti II*." *Id.* (footnotes omitted). The Court also found the statute served a significant state interest by providing an opportunity for parents to supply a physician with essential medical information about the minor woman.

70. *Id.* at 413. The Court cited *Harris v. McRae*, 448 U.S. 291, 325 (1980): "[S]tate action 'encouraging childbirth except in the most urgent circumstances' is 'rationally related to the legitimate governmental objective of protecting potential life.'" 450 U.S. at 413.

71. *Id.* at 414.

tion decision by a minor can and do vary so substantially that absolute rules—requiring parental notification in all cases or in none—would create an inflexibility that often would allow no consideration of the rights and interests [of the state, parents or minor].⁷³

Justice Stevens concurred in the judgment but declined to join the opinion. He believed the Court had a duty to answer the broader question of the statute's constitutionality as applied to all minor women.⁷⁴ On that question, Justice Stevens asserted that a parental notice requirement would be justified in all cases. He based his opinion on a state's interest in protecting a "young pregnant woman from the consequences of an incorrect abortion decision."⁷⁵

Justice Marshall dissented, joined by Justices Brennan and Blackmun, and found the plurality opinion too narrow. Justice Marshall disagreed that appellant lacked sufficient standing to challenge the Utah statute.⁷⁶ He concluded that appellant did have standing and examined the statute to see if parental notification placed any burdens on the minor woman's abortion decision. He noted, "[t]he ideal of a supportive family so pervades our culture that it may seem incongruous to examine 'burdens' imposed by a statute requiring parental notice of a minor daughter's decision to terminate her pregnancy."⁷⁷ However, he acknowledged that many minor women would encounter interference from their parents after their notification.⁷⁸ The hardship created for these women⁷⁹ would be the result of a "state-imposed obstacle to the exercise of . . . free choice."⁸⁰ The Utah

72. *Id.* at 420.

73. *Id.* at 421.

74. *Id.* at 422-25.

75. *Id.* at 426.

76. *Id.* at 436-37. Justice Marshall stated that realistically many families do not live up to this ideal of the supportive family and that parental notification effectively would cancel a minor woman's right to avoid disclosure of her personal choice.

77. *Id.* at 437. "Many minors, like appellant, oppose parental notice and seek instead to preserve the fundamental personal right to privacy. It is for these minors that the parental notification requirement creates a problem." *Id.*

78. *Id.* at 438-39. "Many minor women will encounter interference from their parents after the state-imposed notification. In addition to parental disappointment and disapproval, the minor may confront physical or emotional abuse, withdrawal of financial support, or actual obstruction of the abortion decision." *Id.* at 439.

79. *Id.* at 441. Justice Marshall noted that the state-created obstacle did not operate

statute "unquestionably" burdened a minor woman's right of privacy, and none of the reasons offered by the state justified infringement upon this right.⁸⁰ He stated the "Court must join the state courts and legislatures which have acknowledged the undoubted social reality: Some minors, in some circumstances, have the capacity and the need to determine their health care needs without involving their parents."⁸¹

The Court's ruling in *Matheson* is very narrow and has not resolved the issue of the constitutionality of parental notification statutes as applied to minor women who are mature enough to make the abortion decision independent of their parents. Three Justices upheld the constitutionality of parental notification requirements for unemancipated and immature minor women, and one Justice found such requirements were not unconstitutional for any minor women. In addition, two members of the plurality expressed the opinion that a state must provide access to an independent decision-maker so that mature minor women have an alternative to notifying their parents.

The lack of a definitive ruling from the Court will create confusion not only for state legislatures and lower courts, but also for those minor women who are subject to a variety of differing regulations.⁸²

in a neutral fashion. Because notice was not required for other pregnancy related medical care, only minor women who sought abortions encountered the burden imposed by the notification statute.

80. *Id.* at 446. Justice Marshall concluded that even if the state's purpose in encouraging consultation between the minor woman and her parents was legitimate, the statute failed to advance the asserted goal. "Parental consultation hardly seems a legitimate state purpose where the minor's pregnancy resulted from incest, where a hostile or abusive parental response is assured, or where the minor's fear of such a response deters her from the abortion she desires." *Id.*

81. *Id.* at 453.

82. Since the Court ruling in *Matheson*, four states have enacted parental notification statutes attempting to conform to *Matheson*. See 1981 Minn. Sess. Law Serv. ch. 228 (West) (amending MINN. STAT. § 144.343), providing in part: "[N]o abortion operation shall be performed upon an unemancipated minor or upon a woman for whom a guardian or conservator has been appointed . . . until at least 48 hours after written notice of the pending operation." This statute also has an alternative provision providing for the possibility of one section being held invalid or enjoined. The alternative provision would provide a minor woman with a judicial proceeding if she elects not to allow notification of her parents. NGB. REV. STAT. § 28-347 (Supp. 1981) provides for 24-hour notice to parents prior to an abortion for a minor woman, but also provides that:

The district court or any judge thereof in the county in which the minor resides or the abortion is to be performed or, in the

IV. STATE INTERESTS SERVED BY PARENTAL NOTIFICATION

In *Matheson*, the Court affirmed that the state interest in requiring parental notification must be significant to permit infringement on a minor woman's right to privacy. The Court found the state's interests did outweigh an unemancipated minor woman's right. The question of what state interests are served by requiring parental notification is central to any analysis of this area.

One identified state interest in regulating a minor woman's access to an abortion is protection of the woman's health.⁸³ Another is protection and promotion of family integrity and parental authority.⁸⁴ Parental notification requirements do not appear

absence from the county of such district judge the county court or a judge thereof, shall, upon it appearing satisfactorily to the court or judge by the affidavit or testimony of the petitioning minor that the minor is mature enough to make the abortion decision independently or that notification would not be in the minor's best interests, waive the notice requirements of . . . this section.

NEV. REV. STAT. § 442-255 (1981) provides in part: "A person shall not knowingly perform an abortion upon an unmarried and unemancipated woman who is under the age of eighteen years unless he notifies a parent or guardian of the woman at least 24 hours before the abortion, if it is possible to notify the parent or guardian." R.I. GEN. LAWS § 23-4.7-3.1 (Supp. 1981) provides: "In the case of a pregnant minor, the physician shall exercise reasonable diligence to notify the parent or legal guardian of the minor prior to performing the abortion, if feasible and practicable."

The Minnesota and Nebraska statutes appear to be a direct response to the suggestion by Justice Powell in *Matheson* that a state may not validly require notice to parents in all cases without providing an independent decision-maker. See 450 U.S. at 420.

83. The California Legislature rejected a bill which would have required parental notice. The purpose of this bill was stated in terms of protecting a minor woman's health:

The Legislature also finds that abortion is associated with an increased risk of complication in subsequent pregnancies, that the medical, emotional, and psychological consequences of an abortion are serious and can be lasting, and that the emotional and psychological effects of the pregnancy and abortion experience are markedly more severe in girls under 18 than in adults. The Legislature further finds that, if the pregnant girl elects to carry her child to term, the medical decisions to be made entail few—perhaps none—of the potentially grave emotional and psychological consequences of the decision to abort.

S. 154, 1981-82 Reg. Sess. (Cal. 1981). The bill originally included parental consent provisions which were eliminated. S. 154 died in committee.

84. The other stated purpose of the proposed California parental notification statute was protection of family integrity and unity:

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to serve or protect these interests when balanced against the minor woman's interests. The state's interest in the minor woman's health is, in fact, not served by requiring parental notification because, as noted earlier, parental notification can have extremely detrimental effects on a minor woman's psychological health.⁸⁵

The Court has recognized that states have a valid interest in protecting and promoting family integrity and parental authority.⁸⁶ However, the Court has recognized that parental authority cannot be absolute.⁸⁷ Although it might appear that encouraging a minor woman to consult her parents would, in many cases, promote family harmony, this would not be true in all cases. Where a minor woman and her parents disagree regarding her sexual activity, a requirement that the parents be informed of the possibility of abortion will do very little to promote family unity and harmony.⁸⁸

The Legislature, furthermore, finds that enhancing the potential for parental consultation concerning the abortion decision with its potentially traumatic and permanent consequences, is reasonably calculated to protect minors and thus furthers a constitutionally permissible end. The Legislature finds that this enhancement also plainly serves the important considerations for family integrity and advances the constitutionally protected relationship between parents and child, including the parents' claim to authority in their own household, to direct the rearing of their children, and the parents' important guiding role in the upbringing of their children, which includes counseling them on important decisions.

Id.

85. See *supra* note 35.

86. *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510 (1924).

87. A parental veto was seen by the Court in *Danforth* as an impermissible exercise of parental authority:

It is difficult, however, to conclude that providing a parent with absolute power to overrule a determination, made by the physician and his minor patient, to terminate the patient's pregnancy will serve to strengthen the family unit. Neither is it likely that such veto power will enhance parental authority or control where the minor and the non-consenting parent are so fundamentally in conflict and the very existence of the pregnancy already has fractured the family structure.

428 U.S. at 75.

88. "[A]ny state interest in encouraging consultation between the daughter who is seeking an abortion and her parents is not necessarily achieved by the notice requirement because merely giving notice to the parents does not assure that there will be any meaningful dialogue." *Margaret S. v. Edwards*, 488 F. Supp. 181, 204 (E.D. La. 1980).

Parental notification is based, in part, on the assumption that once a minor woman's parents have been notified, the woman and her parents will rationally discuss her decision to obtain an abortion. As a result of this dialogue, the parents and the minor woman will make a decision that is ostensibly in the best interests of the daughter.⁸⁹ But when a minor woman has decided to seek an abortion without her parents' knowledge, this discussion may not take place, or if it does, may result in a decision that is not in the minor woman's best interests. It may result instead in family argument and strife.⁹⁰ The state, therefore, rather than promoting and protecting family integrity, would be contributing to the already existing strife. The state interest in safeguarding the family, in this situation, is clearly outweighed by the minor woman's right of privacy.

An underlying state interest in requiring parental notification is prevention of teenage sexual activity and teenage pregnancies.⁹¹ This interest reflects a concern for preserving certain moral values regarding pre-marital sexual activity.⁹² The belief that the rise in teenage sexual activity is due to accessible abortion appears to be one motivating factor behind abortion regulation.⁹³ However, teenage sexual activity and access to abortions do not correlate.⁹⁴ Exact reasons behind the increase

89. "Ostensibly, the notice requirement furthers the States' interest in insuring that parents are given the opportunity to participate in an important and potentially traumatic decision in the life of their minor daughter, thus promoting family dialogue and harmony." *Id.*

90. It is unrealistic . . . to assume that [a supporting and understanding] intra-family relationship exists in every case, and where such a relationship does not exist, the required notification is less likely to result in an objective determination as to whether the minor is mature and well enough informed to make an intelligent abortion decision.

Leigh v. Olson, 497 F. Supp. 1340, 1350 (D.N.D. 1980).

91. This interest is one which is promoted strongly by interest groups who feel that access to abortion and contraceptives, as well as sex education, is responsible for the rise in minors' sexual activity. "Members of the Moral Majority believe that stringent legislation limiting minors' rights to privacy will be an effective method of controlling and deterring sexuality: if birth control and abortion are not readily available, the teenagers will think twice about reckless sexual behavior." Meyers, *supra* note 1, at 20.

92. See *Carey v. Population Serv. Int'l*, 431 U.S. 678 (1977). Justice Brennan was unpersuaded that there was a significant state interest in promoting a policy of discouraging sexual activity among minors by prohibiting access to contraceptives.

93. See *supra* note 91.

94. In 1973, *Roe* struck down state laws outlawing abortion except to save a woman's life. *Danforth* extended the right to decide whether or not to bear a child to mi-

in teenage sexual activity are unknown. It has been postulated that the age of sexual maturation has dropped significantly, resulting in teenagers becoming sexually active at earlier ages.⁹⁵ Requiring parental notification will not significantly affect this increase in sexual activity: "The imposition of parental consent or notification would not impel all young adolescents to tell their parents about their decision . . . to have an abortion, or to stop having sex."⁹⁶

Another interest served by required parental notice is prevention of abortions. This interest appears to be intertwined with that of preserving moral values. Opposition to abortion is never explicitly stated as a reason for parental notification legislation; most statutes have protection of the family, in some form, as a stated purpose.⁹⁷ However, opposition to abortion is the primary interest served by such statutes.

For some groups, abortion represents the taking of innocent life; others view motherhood as a woman's primary role, and pregnancy as an honor for which women are chosen.⁹⁸ Women who reject this "honor," either by remaining childless or by terminating a pregnancy, are seen as a threat to the status quo.⁹⁹

nors in 1976. Between 1961 and 1974, out-of-wedlock births for 14- to 17-year-olds increased 75%. 11 MILLION TEENAGERS, *supra* note 26, at 13. The significance of this increase is that it occurred before abortion became legally available to minor women.

95. "Without question, early coitus is closely associated with early biologic development. Acceleration of sexual development and behavior has occurred at the same time as a relaxation of societal standards." ADOLESCENT HEALTH CARE *supra* note 56, at 33.

Not only are minors maturing sexually at an earlier age, but they are also the target of advertising campaigns suggesting that to be attractive and popular, they should be sexy. A recent development in this campaign has been the use of post-pubescent young women in place of adult women for advertisement of jeans, cosmetics, perfumes and high fashion.

96. Torres, Forrest & Eisman, *supra* note 30, at 291.

97. Many statutes use protection of the family or protection of the parent-child relationship as a basis for requiring parental notice. See ILL. ANN. STAT. ch. 38, § 81-51 (Smith-Hurd Supp. 1980-1981) (enacted to support rights and responsibilities of parents); UTAH CODE ANN. § 76-7-304 (1978) (found in Criminal Code under Offenses Against the Family). See also *supra* note 84.

98. "An important corollary of the right to life argument was its implications of the role and responsibility of women as mothers"; women are expected to make the required sacrifices for childbearing and a woman's primary responsibility is to carry a pregnancy to term. A. STEINHOFF & M. DIAMOND, ABORTION POLITICS: THE HAWAII EXPERIENCE 106-10 (1977). "Childbirth has nowhere been regarded merely as one possible event in a woman's life." Rich, *The Theft of Childbirth*, in SEIZING OUR BODIES: THE POLITICS OF WOMEN'S HEALTH 146 (C. Dreifus ed. 1977).

99. "The value of a woman's life would appear to be contingent on her being preg-

These women have refused to accept their culturally imposed role to bear children and continue the species.¹⁰⁰ Much anti-abortion sentiment is also combined with religious fundamentalism as abortion is believed to be a major sign of moral permissiveness.¹⁰¹ Groups opposed to abortion, therefore, focus on either overturning the Supreme Court's decision in *Roe* or lobbying for legislation limiting access to abortion.¹⁰² Recent federal legislation limiting access to abortion reflects this bias.¹⁰³ Congressmen who openly oppose abortion¹⁰⁴ have introduced

nant or newly delivered. Women who refuse to become mothers are not merely emotionally suspect, they are dangerous." Rich, *supra* note 97, at 148.

100. *Id.*

101. "A new and frightening factor has been added to the politics of abortion. This is the powerful movement of fundamentalists into the antiabortion cause." Simmons, *Fundamentalism and Abortion Politics*, 4 PLANNED PARENTHOOD REV. 12 (1981). Fundamentalism is a form of religious zeal whose followers see themselves as acting to save the world from moral decline. Some leaders of the fundamentalist movement have aligned themselves with ultra-conservative politicians and groups to form the Christian Right. The result is the formation of groups such as the Moral Majority founded and led by the Reverend Jerry Falwell, a Baptist from Virginia, whose primary goal is to ban abortion. The movement also includes the Christian Voice, a California-based group whose board includes Senators Orrin Hatch (R.—Utah), James McClure (R.—Idaho), Roger Jepsen (R.—Iowa) and Gordon Humphrey (R.—N.H.). *Id.*

102. Legislation has been introduced in Congress aimed at overturning *Roe*. See *supra* note 17. The Human Life Statute would do what the Court in *Roe* expressly refused to do: Declare that the word "person" in the fourteenth amendment includes the unborn and allow states to prosecute abortion as murder. This legislation has the support of the National Right to Life Committee, the largest antiabortion organization. The Human Life Federalism amendment, which would authorize Congress and the states to prohibit or regulate abortion, was introduced by Senator Orrin Hatch of Utah and has the backing of the National Conference of Catholic Bishops. Donovan, *Half a Loaf: A New Antiabortion Strategy*, 13 FAM. PLAN. PERSP. 262 (1981).

103. See *supra* note 13.

104. When the Human Life Federalism amendment was introduced in the House of Representatives by Representative Ashbrook (R.—Ohio), he stated:

For far too long, the people of this country have been frustrated in their efforts to petition their government for a redress of grievances in this matter [abortion]. The courts have consistently struck down most legislative efforts to limit or even regulate abortion. Spousal and parental consent requirements are virtually nonexistent, and in most instances, minor daughters can obtain abortions even without parental knowledge.

What we have in this country today is nothing less than runaway, wide-open abortion-on-demand. There are no real restrictions on the so-called right to abortion that was created in the Supreme Court's 1973 decision.

H.R.J. Res. 372, 97th Cong., 1st Sess., 127 CONG. REC. 9407-9, 9408 (daily ed. Dec. 11, 1981).

Representative Henry J. Hyde (R.—Ill.), who introduced the Human Life Statute, is

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bills reflecting this viewpoint. Antiabortion and fundamentalist groups have also applied substantial pressure on state and federal officials in legislative hearings and elections.¹⁰⁶

As the rate of teenage pregnancy climbs, antiabortion and fundamentalist groups point to access to abortion as a major cause of this increase.¹⁰⁶ Requiring parental notice is viewed as a method of preventing reckless teenage sexual activity.¹⁰⁷ As

vocal in his opposition to abortion and represents antiabortion interests in Congress.

Q Representative Hyde, why are you in favor of outlawing abortion?

A Because abortion is the killing of an innocently inconvenient human life

Q Shouldn't a woman have a right to decide this question for herself?

A No. Neither a woman nor a man should have the right to kill another human being. The fetus or embryo in the woman is a separate human being with its own blood-circulation system and brain waves.

Should Abortions Be Outlawed? Interview with Representative Henry J. Hyde, U.S. News & WORLD REP., May 1981, at 31.

Other Congressmen openly opposed to abortion include, Senators Jeremiah Denton (R.—Ala.), Don Nickles (R.—Okla.) and Rudy Boschwitz (R.—Minn.), co-sponsors of the Human Life Federalism amendment, and Senator Jesse Helms (R.—N.C.), co-sponsor of the Human Life statute.

105. Tactics employed by antiabortion and fundamentalist groups include: Use of public forums featuring expert speakers against abortion, opinion polls, use of the media by interviews and publication of advertisements, letter writing campaigns, mass demonstrations showing pictures of fetal development, and lobbying efforts with legislators. A. Steinhoff & M. Diamond, *supra* note 98, at 35-59.

By joining forces with fundamentalist groups and conservative politicians, antiabortion groups have been able to raise large sums of money to increase their influence upon elections. Political action committees such as Senator Jesse Helms' National Congressional Club raised \$7.9 million in the 1979-80 election year and spent \$4.6 million to support the presidential bid of Ronald Reagan. The National Conservative Political Action Committee raised \$7.6 million and spent \$3.2 million, much of it for negative advertising aimed at defeating liberal senators. S.F. Chronicle, Feb. 21, 1982, at 2, col. 3.

The 1980 elections reflected the increased efforts of antiabortionists to oust pro-choice candidates from office.

The 97th Congress is considerably more conservative—and more opposed to legal abortion—than its predecessor, with the Republicans having gained control of the Senate. Moreover, prochoice Democrats such as John Culver (Iowa), Warren Magnuson (Wash.); George McGovern (S.Dak.) and Birch Bayh have been replaced in the Senate by such New Right and antiabortion activist Republicans as John East (N.C.), Charles Grassley (Iowa), Don Nickles and Jeremiah Denton.

Donovan, *supra* note 101, at 265.

106. See *supra* note 91.

107. *Id.*

noted above, parental notice will not significantly deter sexual activity.¹⁰⁸ It will, however, have a significant impact on a minor woman's access to an abortion. Parental intervention resulting from notification may prevent some minor women from obtaining abortions.¹⁰⁹ Additionally, fear of parental notification may prevent many other minor women from seeking abortions.¹¹⁰ This fear is a major reason minor women delay seeking an abortion.¹¹¹ It is the contention of this author that preventing or limiting access to abortion will be the singular effect of requiring parental notice.

V. CONCLUSION

At present, a state can require parental consent if it provides a judicial process as an alternative to consent.¹¹² A state can also require parental notification for a minor woman who is unemancipated or is not mature enough to make an abortion decision independently.¹¹³ The Court in *Matheson* failed to decide the constitutionality of parental notification for mature minor women.

This reluctance to find such procedures burdensome on a minor woman's right of privacy is based on the idea that they do not affect a minor woman's right to an abortion. The Court is not willing to address the fact that a parental notification requirement will effectively prevent access to abortion. Many mi-

108. See *supra* note 91 and accompanying text.

109. See *supra* notes 34 and 35 and accompanying text.

110. When asked what they would do if it was required that their parents be notified of their decision to seek an abortion, nine percent of the women surveyed say that they would have a self-induced or an illegal abortion, another nine percent say they would have the baby, two percent say that they would leave home and three percent say that they don't know what they would do. Some of their responses might be considered irrational (for example, having the child would not prevent their parents from finding out about the pregnancy). The responses do indicate, however, that a sizeable proportion of teenagers believe that the notification of their parents would put them in a desperate situation and that they would be forced to resort to desperate measures to deal with it.

Torres, Forrest & Eisman, *supra* note 30, at 288.

111. *Id.*

112. *Bellotti v. Baird*, 443 U.S. 113 (1979).

113. *H.L. v. Matheson*, 450 U.S. 398 (1981).

nor women will be unable to obtain an abortion after their parents have been notified. As noted by Justice Marshall in *Matheson*, such notification requirements are based on the ideal of a supportive family. However, many families do not live up to this ideal.¹¹⁴

The *Matheson* decision also leaves lower courts and state legislatures with no significant guidelines¹¹⁵ as the members of the plurality opinion expressed different opinions on the constitutionality of parental notification requirements for mature minors. The issue needs to be resolved; until it is, minor women will be subject to many differing and confusing regulations when they seek to obtain an abortion.

Parental notification statutes place an undue burden on a minor woman's right of privacy. They do not serve any significant state interest inasmuch as the parent-child relationship and family harmony are not enhanced by such restrictive laws. When a minor woman is in conflict with her parents regarding her sexual activity, notifying the parents of the decision to have an abortion will most often increase family strife. The minor woman's mental or physical health is, therefore, not protected. Such a result affects the minor woman's right of privacy. This fundamental right is precisely that which notification statutes seek to abrogate.

Opposition to abortion per se should be recognized as the underlying reason for parental notice requirements. The courts must look beyond the stated interests and recognize that arguments premised on protection of the family and family values are used by antiabortion forces to restrict access to abortion. Only by a thorough examination of the interests served by parental notification statutes can courts decide the constitutionality of such statutes. The courts must engage in this examination to preserve the right of privacy established in *Danforth* and *Bellotti*.

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114. *Id.* at 436.

115. *See supra* note 82.